

Minutes of Meeting
Health Services Council
Project Review Committee-II

DATE: 23 February 2006

TIME: 3:00 PM

LOCATION: Health Policy Forum

ATTENDANCE:

Committee II: Present: Victoria Almeida, Esq., (Vice Chair), Maria R. Gil, Sen. Catherine E. Graziano, RN, Ph.D., Denise Panichas, Robert J. Quigley, DC, (Chair), Larry Ross, Reverend David Shire (Secretary)

Not Present: Raymond C. Coia, Rosemary Booth Gallogly, Wallace Gernt

Staff: Valentina D. Adamova, Michael K. Dexter, Joseph G. Miller, Esq., Andrea Therrien (Intern)

Public: (see attached)

1. Call to Order and Approval of Minutes

The meeting was called to order at 3:05 PM. Minutes of the 19 January 2006 Project Review Committee - II meeting were approved as submitted. The Chairman noted that conflict of interest forms are available to any member who may have a conflict. The Chairman stated that due to the Open Meetings Act, the minutes of the meetings have to be available to the public by the next meeting date or within thirty-five days, which ever is sooner. The Chairman stated that because the next meeting might not occur within thirty-five days or the minutes might not be available by the next meeting time, he would ask the Committee members to vote to extend the availability of minutes beyond the time frame as provided for under the Open Meetings Act. A motion was made and seconded, and the motion passed by a vote of seven in favor and none opposed (7-0) that the availability of the minutes for this meeting be extended beyond the time frame as provided for under the Open Meetings Act. Those members voting in favor were: Almeida, Gil, Graziano, Panichas, Quigley, Ross, Shire.

2. General Order of Business

The first item on the agenda was the application for change in effective control of Grace Barker Nursing Center, Inc. at 54 Barker Avenue in Warren. Staff stated that the application is for a change in effective control by means of a transfer in stock..

The applicant stated that currently Mr. Machado owns four voting shares, two of which he acquired after the death of his wife. His daughter, Mrs. Lescault, President and Director of Nursing, owns two voting shares as well. The application is to transfer Mr. Machado's shares to Mrs. Lescault. The applicant stated that Mr. Machado is no longer involved with the operations of the facility. The applicant called the Committee's attention to a typo in the application on page 3a that should read that in 2004 the Medicare breakdown was 8.30% and not 58.30%.

Staff asked the applicant to inform the Committee on the facility's survey results. The applicant replied that historically, the facility has done very well. The deficiencies that the facility has received have all been minor. Staff asked when the last survey was done and the applicant notified the Committee that one was in process at the present time. Staff also asked the applicant to identify the single deficiency that the applicant received in the past year. The applicant replied that it was with respect to an alarm and that a patient had an incorrect safety device. This deficiency was corrected.

The Chairman asked the applicant to reiterate that there would be no exchange of money because of the transfer of stock. The applicant agreed and stated that the voting shares were being given as a gift.

To a Committee member's question regarding the financials, staff stated that positive net income was shown in 2005.

Mr. Ross asked if the applicant anticipated any change in operation given the relationship of the applicant. The applicant responded that no change is anticipated and that the change actually recognizes who is operating the facility.

The Chairman noted that approval would be contingent upon the expiration of the comment period.

A motion was made, seconded and passed by a vote of seven in favor and none opposed (7-0) to recommend that the application be approved contingent upon the expiration of the comment period. Those members voting in favor of the motion were: Almeida, Gil, Graziano, Panichas, Quigley, Ross, Shire.

Staff noted that the next Health Services Council meeting has been scheduled for 28 March 2006.

The next item on the agenda were the applications of Fresenius Medical Care Holdings, Inc. and Fresenius Medical Care AG for a change in effective control of Renal Care Group, Inc. whose subsidiary NNA of Rhode Island, Inc. d/b/a RCG Pawtucket and RCG Providence operates facilities at 79 Division Street in Pawtucket and 125 Corliss Street in Providence.

Staff asked the applicant to provide a summary of the scope of the project. The applicant explained that this project is a national transaction that affects two facilities in Rhode Island. The applicant discussed the role of the FTC in this transaction. FTC is involved because RCG owns and operates 450 dialysis clinics throughout the United States and has securities traded on the NYSE valued at a total of \$3.5 billion. Due to the size of the transaction, federal laws require Fresenius to submit information to the FTC for review. The FTC found that the transaction will have anti-competitive effects in twenty-two markets where RCG's existing operations overlap with the existing Fresenius medical care clinics. Therefore, the FTC has raised objections to the proposal. They have proposed to allow the merger under the condition that Fresenius divests a large number of clinics. In order to prevent a monopoly, the FTC has given Fresenius the choice to either divest two clinics in Rhode Island that it proposed to acquire from RCG or to divest two of Fresenius' existing clinics located in North and East Providence. Fresenius has opted to take the latter recommendation in the interests of its stockholders. In cooperation with the FTC, Fresenius has identified the National Renal Institute ("NRI") as a buyer for the two Providence clinics. This is a separate transaction from the FTC's final approval of the merger. The RCG merger aims to close the merger by March 31, 2006.

Staff noted that the Department recently approved American Renal Associates, Inc. ("ARA") change order request of five Fresenius facilities which included closure of two facilities in Rhode Island and

one in Fall River. The two that were supposed to close are the two facilities that Fresenius is now proposing to sell to NRI due to the FTC recommendation. The applicant replied that the FTC objected to that closure agreement. Both Fresenius and ARA have communicated to the FTC that that portion of the agreement will be deleted so that no clinics will be terminated. The applicant also mentioned that the FTC has concluded that the Westerly, Wakefield, and Woonsocket facilities do not create competitive concerns and will allow the transfers to proceed, but that the two Warwick clinics owned by Fresenius may create concern because of their proximity to ARA's existing facilities. It has been argued that the transfers should still be allowed due to the proposed sale to NRI. The applicant stated that no transactions will take place until the FTC approval.

Staff asked if the transaction being proposed to the Committee today was contingent upon NRI's purchase of the two clinics that were going to close, or is if it was related to the ARA project. The applicant replied that the NRI transaction is related to the present application. The FTC has mandated Fresenius to sell one-hundred clinics, including two in Rhode Island to NRI. In order for the FTC to approve the merger, it has to approve the transaction between Fresenius and NRI first. Once the merger is approved, Fresenius will own seven facilities in Rhode Island. Within the next ten days Fresenius has to perform the divestiture transaction in order to bring NRI into the market and to eliminate concerns of monopoly power. An exception is being made for Rhode Island, however, in that Fresenius is asking

Rhode Island to allow them 4-5 months, rather than 10 days, to divest. The ARA agreement will go into effect once the FTC makes a decision regarding the two Warwick clinics.

The Chairman asked the applicant if these two approvals are conditioned upon the FTC's approval. The applicant replied that they were, and that if the Department approved this proposal, it would be conditional. Once the FTC has made a decision, it will issue a press release and Fresenius will be free to close the merger.

The Chairman asked if the patients in the two clinics that Fresenius will divest will have a smooth transition in care. The applicant responded that the transition will be seamless. In addition, the FTC has expressed concern as to whether or not NRI is a substantial and viable provider of care so it has looked carefully at NRI to verify that they have an adequate patient care team and management team, and that they have the financial resources to be able to be a longstanding player in all of the markets they have to service. The applicant also noted that there would be no transition because the two facilities that were supposed to close are now allowed to stay open and the patients will not have to leave.

Staff asked if the employees of the two facilities would become employees of the new company. The applicant replied that the employees would become the employees of the new owners.

The Chairman asked the applicant if they anticipate having to come before the Committee again in the future for further changes. The applicant stated that it does not see any foreseeable changes as of right now.

Ms. Panichas then asked how many renal companies operate in Rhode Island. Staff replied that at the moment there are three--ARA, RCG, and Fresenius. If the merger is approved, then RCG be acquired by Fresenius, and NRI will be brought into the market by the FTC. Therefore, there will still be a total of three renal companies in Rhode Island.

Ms. Panichas expressed concern over if one of the companies were to fail, whether that would create a monopoly in Rhode Island. She wanted to make sure that the Committee reiterated this point to the Director of Health. The Chairman responded that these facilities have close to 100% Medicare payor mix and have demonstrated that they have excellent cash flow. Unless the payers went out of business, the renal care facilities would remain stable.

Staff requested information regarding licensure status of the facilities. The applicant responded that Rhode Island Fresenius facilities have historically done very well on surveys. The deficiencies that have been given have been minor and easily corrected. Staff asked how Fresenius is structured. The applicant replied that their facilities are categorized by region, and the Northeast region, as well

as the other regions, has done well in the regulatory environment. They mentioned that they have had some difficulties adjusting to regulatory changes in New York, but they implemented intense measures to correct those deficiencies.

The Chairman asked how well the facilities were staffed since the nursing care is very specialized. The applicant replied that they provide their own training program, but recruiting and retaining staff can be difficult. In Rhode Island specifically, the poor competition has lead to staff toggling back and forth between providers. The applicant emphasized that they maintain required staffing levels, and in Rhode Island they hire Certified Nurse's Aides (CNA) to assist with dialysis under the supervision of an RN. They also encourage unlicensed staff to participate in national certification programs even though they are not mandated by the state. A committee member asked what the staff to patient ratio was and the applicant replied that it was 1:3. There are usually twelve patients to one nurse. It is required for there to be two RNs in the building at all times and a Director of Nurses.

Ms. Panichas asked the applicant by what accreditation standards are they allowed to have non-certified people to participate in a medical procedure. The applicant replied that each state is different depending on licensure requirements, state guidelines, or industry standards set by Medicare. There are general standards which mandate certain individuals, such as having a medical director, a physician, an RN in charge at all times, a CEO, and a governing body.

Ms. Panichas also asked if there is any national accreditation for renal facilities. The applicant replied that there is not. Since ESRDs are certified by Medicare, the Medicare program is considered the national body that applies standards of conduct and patient care.

There being no further business the meeting was adjourned at 3:45 PM.

Respectfully submitted,

Valentina D. Adamova